

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.150 of 2020

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1. Shila Devi, Wife of Sri Pappu Thakur, Resident of Village-Lodipur, P.S.-Lodipur, District-Bhagalpur, Permanent Resident of Village-Jagarnathpur, P.S.-Rajoun, District-Bhagalpur
 - 2.1. Champa Devi, Daughter of Late Pappu Thakur, Resident of Village - Lodipur, P.S. Lodipur, District- Bhagalpur.

... .. Appellants

Versus

1. Raja Ram Dokania, Son of Late Kamal Ram Dokania, Resident of Village-Aliganj, P.O./P.S.-Banka, District-Banka (Owner of Vehicle Tanker BR 51-6620)
2. Md. Nisar Ansari, Son of Md. Jyram Ansari at Rajoun, P.S.-Rajoun District-Banka. (Driver of the Vehicle Tanker BR51-6620)
3. Divisional Manager, National Insurance Company, LTD Sumrit Mandal Complex, Jail Road, Bhagalpur.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Vivekanand Vivek, Advocate Mr. Deepak Kumar Poddar, Advocate Mr. Sheo Shankar, Advocate Mr. Rang Nath Pandey, Advocate
For the Respondent Nos. 1 & 2	:	Mr. Balram Kapdi, Advocate
For the Respondent No.3	:	None.

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 07-11-2025

The present Miscellaneous Appeal has been preferred against the impugned judgment/award dated 05.08.2019 passed by learned District Judge-cum-Motor Accident Claim Tribunal, Bhagalpur in Claim Case No. 98 of



2017, whereby learned M.A.C.T., Bhagalpur has directed the insurance company, who is the Respondent No.3 herein, to pay an amount of Rs. 6,33,000/- to the claimants, who are Appellants herein, as compensation on account of death of one Ashu Raj Kumar @ Ashu Raj @ Shrawan Kumar in a motor accident along with interest @ 8 per cent per annum from the date of filing of the petition. The payment of Rs. 50,000/- already made towards interim compensation has been directed to be adjusted against the total compensation amount and the compensation was directed to be paid within sixty days from the date of the order.

2. As per the statement of learned counsel for the Appellants, the total compensation amount as directed by learned Tribunal has been already received by the Appellants from the insurance company. However, being dissatisfied by the quantum of the compensation, the Appellants have preferred this appeal under Section 173 of the Motor Vehicle Act for getting enhanced compensation.

3. In the course of pendency of this appeal, the Appellant No.2, Pappu Thakur has died. Hence, he has been substituted by his legal heir, Champa Devi, who is his married daughter. The other legal heir Shila Devi (wife of Pappu



Thakur) was already Appellant No.1 herein.

4. The factual background of this case is that on 29.03.2017, an accident took place involving a tanker bearing registration no. BR-51-6620 resulting into death of one Ashu Raj Kumar @ Ashu Raj @ Shrawan Kumar, son of the claimants Shila Devi and Pappu Thakur. Subsequently, Rajoun P.S. Case No. 104 of 2017 was registered on 29.03.2017 for the offences punishable under Section 279, 337, 338, 304A IPC against the driver and the owner of the aforesaid tanker. As per further averment in the claim petition, the deceased Ashu Raj Kumar @ Ashu Raj @ Shrawan Kumar was traveling in an auto-rickshaw bearing registration no. BR-10-PA-8514 which was dashed by the said tanker on account of rash and negligent driving. The deceased is alleged to be 19 years of age at the time of death and he was unmarried and working as a private tutor earning Rs. 10,000/- per month. It was further claimed that the offending tanker was insured with National Insurance Company Limited at the relevant time of accident vide the policy no.171000/31/16/6300002116 effective from 10.07.2016 to 09.07.2017 covering the date of accident on 29.03.2017.

5. The Appellants, Shila Devi and Pappu Thakur filed the claim case no. 98 of 2017 on 11.05.2017 for



compensation of Rs. 16,16,000/- impleading the driver, owner of the offending vehicle and the insurance company.

6. On notice, all the three Opposite Parties appeared, but the Opposite Party Nos. 1 and 2, who were owner and driver of the offending vehicle respectively, did not file any written statement. However, the insurance company, who was the Opposite Party No.3 before the Tribunal, filed its written statement. However, no application under Section 170 of the Motor Vehicles Act was filed by the insurance company seeking permission to contest the claim petition.

7. On the basis of the pleadings of the Claimants and the Insurance Company, the following six issues were framed:

- “(i) Whether the claim case is maintainable?
- (ii) Whether the claimants have valid cause of action for the present claim case?
- (iii) Whether the accident took place due to rash and negligent driving by the driver of the offending vehicle?
- (iv) Whether the claimants are entitled to get compensation as prayed for?
- (v). Whether the offending vehicle was insured at the time of alleged incident?
- (vi) Whether the driver has valid license at the time of accident?”

8. During trial, the Claimants have examined the following two witnesses : **C.W.-1-** Pappu Thakur (Claimant No.2) and **C.W.-2-** Bhajjan Thakur.



9. Besides oral evidence, the Claimants have also brought on record the following documents: **Ext. 1** - the certified copy of FIR of Rajoun P.S. Case No. 104/17, **Ext. 2**- the certified copy of charge sheet of Rajoun P.S. Case No. 104/17, **Ext. 3** - the photocopy of Insurance policy bearing no. 171000/31/16/6300002116 which showing that said offending vehicle was insured on the date of occurrence i.e. 29-03-17 as its validity is since 10-07-16 to 09-07-17, **Ext. 4** - the photocopy of registration paper of vehicle bearing registration No. BR-51-6620. LPT 2515 showing that the said offending vehicle was registered in the name of Raja Ram Dokania (O.P. No. 1), **Ext. 5**- the photocopy of PM Report of deceased Ashu Raj Kumar@ Shrawan showing that the son of claimants, Ashuraj Shrawan died on 29-03-17 i.e. on the date of occurrence, **Ext. 6**- the photocopy of permit of vehicle bearing registration no. BR-51-6620 showing that validity of permit was from 27-05-15 to 26-05-20, meaning thereby that it was valid on the alleged date of occurrence i.e on 29-03-17, **Ext. 7**- the photocopy of transport license of vehicle bearing registration no. BR-51-6620 showing that it was quite valid and is renewed up to 29-12-2021, **Ext. 8**- the Original certificate of Bihar School Examination Board of deceased Ashuraj that the date of birth of deceased is 20-12-



1997 meaning thereby that his age on the date of occurrence i.e. on 29-03-17 was 19 years and 4 months, **Ext. 9-** the photocopy of driving license of Md Nisar Ansari bearing D.L. No. 11553/92/ER, **Ext. 10-** the photocopy of fitness certificate of vehicle bearing registration no. BR-51-6620, **Ext. 11-** the photocopy of pollution certificate of vehicle bearing registration no. BR-51-6620, **Ext. 12-** the photocopy of Tax token and **Ext. 13** is the Original heirship certificate of Pappu Thakur that deceased Ashuraj was son of claimants.

10. However, the Opposite Party No.3 adduced no evidence - either oral or documentary.

11. After consideration of the evidence and relevant material on record, learned Tribunal came to the conclusion that the accident took place on account of rash and negligent driving of the tanker. It was also found by learned Tribunal that the offending tanker was insured by the Insurance Company, who is Respondent No.3 herein. Learned Tribunal also found that the driver of the offending tanker was having valid driving license bearing DL No. 11553/92/ER at the time of the accident. Hence, the Claimant was found to be entitled to get compensation from the Insurance Company.

12. Learned Tribunal also found that the deceased



was 19 years of age on the date of accident and he was earning Rs.200/- per day. Hence, learned Tribunal found annual income of the deceased as Rs.72,000/- and he applied the multiplier of 16 and got the amount of Rs. 11,52,000/- and the same was divided by half to get the figure of Rs.5,76,000/-.

13. Hence, the loss of dependency was found to be Rs. 5,76,000/-. The compensation on the conventional heads was granted as follows:

- (i) For Loss of Estate Rs. 5000/-
- (ii) For Funeral Expenses Rs. 2000/-
- (iii) For Love and affection Rs. 50,000/-

14. As such total compensation of Rs. 6,33,000/- was directed to be paid by the insurance company to the Claimants with interest @ 8 per cent *per annum* from the date of filing of the petition subject to adjustment of Rs. 50,000/- which was paid by the insurance company to the Claimants towards interim compensation.

15. No appeal has been filed by the insurance company or owner or driver. The present appeal has been preferred on behalf of the Claimants being aggrieved by the quantum of compensation.

16. I heard learned counsel for the Appellant and learned counsel for the Respondent Nos.1 and 2, who are owner



and driver respectively. However, nobody is present on behalf of the Respondent No.3, insurance company, despite valid service of notice.

17. Learned counsel for the Appellants submits that he has no dispute with the finding by the Tribunal regarding the income of the deceased @ Rs. 200/- per day. However, no addition to income has been made towards future prospect. He also submits that learned Tribunal has applied multiplier of only 16, whereas it should have been 18 and hence, the loss of dependency has been determined on the lower side. Even the quantum of compensation under the conventional heads has been granted on the lower side. Hence, the Appellants could not get just compensation.

18. However, learned counsel for the Respondent Nos.1 and 2 contests the submission of learned counsel for the appellants submitting that there is no illegality or infirmity in the impugned judgment/award and the appellants are not entitled to get any higher quantum of compensation.

19. He also submits that the Respondent Nos. 1 and 2, being owner and driver of the vehicle and the vehicle being insured with Respondent No. 3/Insurance Company, are not liable to pay any compensation to the appellants. Learned



Tribunal has rightly directed the Respondent No. 3/Insurance Company to pay the awarded amount of compensation to the appellants and which has been already paid to the appellants.

20. However, nobody is present on behalf of the Respondent No. 3/Insurance Company, despite valid service of notice.

The points for determination by this Court

21. In view of rival submissions of the parties, the following points arise for determination by this Court.

- (i) Whether there should be any addition to the income of the deceased towards future prospect while calculating the loss of dependency?
- (ii) What should be the appropriate multiplier in the case on hand ?
- (iii) Whether the appellants are entitled to get higher quantum of compensation under conventional heads ?
- (iv) What should be the quantum of just compensation ?

Law Regarding Just Compensation

22. Sarla Verma Vs. DTC, (2009) 2 SCC 770 is a land mark judgment of Hon'ble Supreme Court in regard to assessment of compensation in cases of death. In this judgment, Hon'ble Supreme Court has laid down principles to provide uniformity and consistency in awarding compensation. The principles as laid down in **Sarla Verma Case** (supra) has been



subsequently modified and improved by Hon'ble Apex Court in subsequent judgments which are as follows:

(i) Reshma Kumari Vs. Madan Mohan,

(2013) 9 SCC 65

(ii) Royal Sundram Alliance Insurance Co. Ltd. Vs.

Mandala Yadagari Goud, (2019) 5 SCC 554

(iii) National Insurance Co. Ltd. Vs. Pranay Sethi,

(2017) 16 SCC 680

(iv) Magma General Insurance Co. Ltd. Vs. Nanu

Ram, (2018) 18 SCC 130

23. All the aforesaid landmark judgments have been referred to and discussed by Hon'ble Supreme Court in **United India Insurance Co. Ltd. Vs. Satinder Kaur, (2021) 11 SCC 780** providing complete prevailing law regarding assessment of compensation in cases of death arising out of Motor Vehicle Accident. The relevant paragraphs of the judgment read as follows:

“Relevant principles for assessment of compensation in cases of death as evolved by judicial dicta.

11. The criteria which are to be taken into consideration for assessing compensation in the case of death are : (i) the age of the deceased at the time of his death; (ii) the number of dependants left behind by the deceased; and (iii) the income of the deceased at the time of his death.



12. In **Sarla Verma v. DTC (2009) 6 SCC 121** this Court held that to arrive at the loss of dependency, the Tribunal ought to take into consideration three factors : (SCC p. 132, para 18)

(i) additions/deductions to be made for arriving at the income;

(ii) the deduction to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference to the age of the deceased.

13. In order to provide uniformity and consistency in awarding compensation, the following steps are required to be followed : Sarla Verma case (2009) 6 SCC 121

“Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a Table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said Table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the “loss of dependency” to the family. Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the



deceased before death (if incurred) should also added.”

(emphasis supplied)

(a) Deduction for personal and living expenses

14. The personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the family. In *Sarla Verma* (2009) 6 SCC 121, this Court took the view that it was necessary to standardise the deductions to be made under the head personal and living expenses of the deceased. Accordingly, it was held that:

14.1. Where the deceased was married, the deduction towards personal and living expenses should be 1/3rd if the number of dependant family members is two to three.

14.2. 1/4th if the number of dependant family members is four to six.

14.3. 1/5th if the number of dependant family members exceeds six.

14.4. If the deceased was a bachelor, and the claim was filed by the parents, the deduction would normally be 50% as personal and living expenses of the bachelor. Subject to evidence to the contrary, the father was likely to have his own income, and would not be considered to be a dependant. Hence, the mother alone will be considered to be a dependant. In the absence of any evidence to the contrary, brothers and sisters of the deceased bachelor would not be considered to be dependants, because they would usually either be independent and earning, or married, or dependant on the father. Thus, even if the deceased was survived by parents and siblings, only the mother would be considered to be a dependant. The deduction towards personal expenses of a bachelor would be 50%, and 50% would be the contribution to the family.

14.5. However, in a case where the family of the bachelor was large and dependant on the income of the deceased, as in a case where he had a widowed mother, and a large number of younger non-earning sisters or brothers, his personal and living expenses could be restricted to 1/3rd, and contribution to the family be taken as 2/3rd.

15. A three-Judge Bench in **Reshma Kumari v. Madan Mohan**, (2013) 9 SCC 65 affirmed the standards fixed in *Sarla Verma*, (2009) 6 SCC 121 with respect to the deduction for personal and living expenses, and held that these standards must ordinarily be followed, unless a



case for departure is made out. The Court held : Reshma Kumari case, (2013) 9 SCC 65 : paras 41-43)

“41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

42. In our view, the standards fixed by this Court in Sarla Verma (2009) 6 SCC 121 on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding para is made out.

43. In what we have discussed above, we sum up our conclusions as follows:

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma 6 SCC 121 subject to the observations made by us in para 41 above.”
(emphasis supplied)

16. A Constitution Bench of this Court in **National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680** held that the standards fixed in Sarla Verma (2009) 6 SCC 121 would provide guidance for appropriate deduction towards personal and living expenses, and affirmed the conclusion in para 43.6 of Reshma Kumari (2013) 9 SCC 65.

(b) Determination of multiplier

17. With respect to the multiplier, the Court in Sarla Verma (2009) 6 SCC 121, prepared a chart for fixing the applicable multiplier in accordance with the age of the deceased, after considering the judgments in Kerala, SRTC v. Susamma Thomas (1994) 2 SCC 176 , U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362] and New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 : .



18. The relevant extract from the said chart i.e. Column 4 has been set out hereinbelow for ready reference:

Age of the deceased	Multiplier (Column 4)
Up to 15 years	-
15 to 20 years	18
21 to 25 years	18
26 to 30 years	17
31 to 35 years	16
36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	9
61 to 65 years	7
Above 65 years	5

19. The Court in **Sarla Verma, (2009) 6 SCC 121** held : (SCC p. 140, para 42)

“42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying *Susamma Thomas, (1994) 2 SCC 176*, *Trilok Chandra, (1996) 4 SCC 362* and *New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720*, which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

(emphasis supplied)

20. In **Reshma Kumari v. Madan Mohan, (2013) 9**



SCC 65, this Court affirmed Column 4 of the chart prepared in *Sarla Verma v. DTC*, (2009) 6 SCC 121, and held that this would provide uniformity and consistency in determining the multiplier to be applied. The Constitution Bench in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680** affirmed the chart fixing the multiplier as expounded in *Sarla Verma v. DTC*, (2009) 6 SCC 121, and held : *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680, paras 44 & 59)

“44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and “income” means actual income less the tax paid. The multiplier has already been fixed in *Sarla Verma v. DTC*, (2009) 6 SCC 121 which has been approved in *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 with which we concur.”

59.6. The selection of multiplier shall be as indicated in the Table in *Sarla Verma v. DTC*, (2009) 6 SCC 121 read with para 42 of that judgment.”

(emphasis supplied)

(c) Age of the deceased must be the basis for determining the multiplier even in case of a bachelor

21. In ***Sarla Verma v. DTC*, (2009) 6 SCC 121**, this Court held that the multiplier should be determined with reference to the age of the deceased. This was subsequently affirmed in ***Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65**, and followed in a line of decisions. A three-Judge Bench in *Munna Lal Jain v. Vipin Kumar Sharma*, (2015) 6 SCC 347 held that the issue had been decided in *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65, wherein this Court held that the multiplier must be with reference to the age of the deceased. The decision in *Munna Lal Jain v. Vipin Kumar Sharma*, (2015) 6 SCC 347 was followed by another three-Judge Bench of this Court in *Sube Singh v. Shyam Singh*, (2018) 3 SCC 18.

22. The Constitution Bench in ***National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680** affirmed the view taken in *Sarla Verma v. DTC*, (2009) 6 SCC 121 and *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65, and held that the age of the deceased should be the basis



for applying the multiplier.

23. Another three-Judge Bench in **Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud, (2019) 5 SCC 554** traced out the law on this issue, and held that the compensation is to be computed based on what the deceased would have contributed to support the dependants. In the case of the death of a married person, it is an accepted norm that the age of the deceased would be taken into account. Thus, even in the case of a bachelor, the same principle must be applied.

24. The aforesaid legal position has recently been re-affirmed by this Court in **Sunita Tokas v. New India Insurance Co. Ltd., (2019) 20 SCC 688**.

(d) Future prospects

25. In the wake of increased inflation, rising consumer prices, and general standards of living, future prospects have to be taken into consideration, not only with respect to the status or educational qualifications of the deceased, but also other relevant factors such as higher salaries and perks which are being offered by private companies these days. The dearness allowance and perks from which the family would have derived monthly benefit, are required to be taken into consideration for determining the loss of dependency.

26. In **Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121]**, this Court held : (SCC p. 134, para 24)

“24. In *Kerala SRTC v. Susamma Thomas*, (1994) 2 SCC 176, this Court increased the income by nearly 100%, in *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179], the income was increased only by 50% and in *Abati Bezbaruah v. Geological Survey of India*, (2003) 3 SCC 148 the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”.) The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50



years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”

(emphasis supplied)

27. In **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**, the Constitution Bench evaluated all the judicial precedents on the issue of future prospects including *Sarla Verma v. DTC*, (2009) 6 SCC 121, and devised a fixed standard for granting future prospects. It was held : *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 pp. 712-14, paras 57-59)

“57. Having bestowed our anxious consideration, we are disposed to think that when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of



increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. *Sarla Verma v. DTC*, (2009) 6 SCC 121 thinks it appropriate not to add any amount and the same has been approved in *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 . Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are



disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

59. In view of the aforesaid analysis, we proceed to record our conclusions:

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

(emphasis supplied)

(e) Three conventional heads

28. In **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**, the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court held that the conventional and traditional heads, cannot be determined on percentage basis, because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified, which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held that reasonable figures on conventional heads,



namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000, respectively. The Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads:

(a) Loss of estate — Rs 15,000 to be awarded.

(b) Loss of consortium.

29. **Loss of consortium**, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

30. In **Magma General Insurance Co. Ltd. v. Nanu Ram**, (2018) 18 SCC 130 this Court interpreted “**consortium**” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

31. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

32. Modern jurisdictions world over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under the loss of consortium on



the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.

34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.

(c) Funeral expenses — Rs 15,000 to be awarded

36. The aforesaid conventional heads are to be revised every three years @ 10%.”

Present Case

24. Now coming to the case on hand, it is found that the deceased Ashu Raj Kumar @ Ashu Raj @ Shrawan



Kumar was 19 years of age on the date of accident, resulting into his death and his daily income has been assessed to be Rs.200/- per day. He was survived by his parents Shila Devi and Pappu Thakur who filed the claim petition before the Tribunal. However, Pappu Thakur died during pendency of the appeal and hence, his daughter has been substituted in his place as appellant No. 2.1. It is also found that the deceased was unmarried on the date of his death and he was working as a private tutor, earning Rs.200/- per day. The claimants/Appellants are his parents.

Computation of compensation

25. As it is already found that the daily income of the deceased is Rs.200/- per day. Hence, the annual income would work out to $(200 \times 30) \times 12 = \text{Rs.}72,000/-$. As per the pleading and evidence on record, it also transpires that he was not paying any tax. Now, as per law, there has to be addition to his annual income towards future prospects. As the deceased was self employed, addition to his annual income towards future prospects would be 40% of the annual income in view of his age being 19 years. Hence, the annual income of deceased after addition towards future prospectus comes out to be Rs. 1,00,800/- $[72,000 + (72000 \times 40\%)]$.

26. Now as per law, there has to be deduction from



the annual income towards personal living expense. In view of the number of dependents being two, this deduction has to be one third of his annual income. Hence, after deduction, the annual income comes to be Rs.67,536/- [1,00,800- (1,00,800 x 33%)]. This annual income of Rs.67,536/- constitutes multiplicand. To find out loss of annual dependency/loss of annual future income could be determined by multiplying this multiplicand by appropriate multiplier. As per law, the appropriate multiplier in this case would be 18 in view of the age of the deceased being 19. Hence, total loss of dependency comes out to be Rs.67,536 x 18= Rs.12,15,648/-.

27. In view of the **Pranay Sethi Case** (supra), compensation has to be awarded under three conventional heads also, namely, loss of Estate, loss of Consortium and Funeral expenses. The figures on such conventional heads was provided by Hon'ble Supreme Court in **Pranay Sethi Case** (supra) as Rs.15,000/-, 40,000/- and 15,000/-, respectively. In this case, Hon'ble Supreme Court was also of the view that these amounts under the conventional heads should be enhanced by 10 % every three years.

28. The **Pranay Sethi Case** (supra) was delivered in the year 2018 and the death of the deceased in the case on



hand had taken place in the year 2017. Hence, there is no need to enhance such figures under the conventional heads. Hence, the appellants has to be awarded compensation under the conventional heads as follows:

(i) Towards Loss of Estate:- Rs.15,000/-.

(ii) Towards loss of parental consortium of mother and father, who are claimants on account of death of the deceased-son- Rs.40,000 x 2 = Rs.80,000/-.

(iii) Towards funeral expenses- Rs.15,000/-.

29. Hence, total compensation payable to the Claimants/Appellants would work out to be Rs.13,25,648/- (12,15,648+15,000+80,000+15,000). As per the pleading of the parties, the claimants/appellants have already received Rs.6,33,000/-. Hence, the appellants are entitled to get balance amount of Rs.6,92,648/- (13,25,648-6,33,000).

30. Hence, the respondent No.3/Insurance Company is directed to pay the said amount of Rs.6,92,648/- to the appellants within two months, failing which the respondent No.3/Insurance Company would be liable to pay penal interest @ 12% per annum. This amount must be paid by way of account payee cheque or Bank Draft in the name of the appellant No.1, Shila Devi.



31. LCR be sent back to the Court below forthwith.

(Jitendra Kumar, J.)

Chandan/-
Ravishankar/-

AFR/NAFR	A.F.R
CAV DATE	16.09.2025
Uploading Date	07.11.2025
Transmission Date	07.11.2025

